




PHIL BREDESEN
GOVERNOR

STATE OF TENNESSEE
DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION
7TH FLOOR, ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TN 37243-0380

LANA C. SEIVERS, Ed.D.
COMMISSIONER

MEMORANDUM

TO: Directors of Special Education

FROM:  Joseph Fisher
Assistant Commissioner

DATE: September 21, 2006

RE: State Criteria for Specific Learning Disabilities

The Office of Special Education Programs for the United States Department of Education has advised this division that the current state eligibility criteria for specific learning disabilities is in conflict with federal regulations.

The second element of the test for eligibility as specifically learning disabled in the current state criteria provides:

Children who perform in classroom academics in a manner commensurate with expected academic standards at the child's grade level cannot be considered as having a Specific Learning Disability, even though they may show deficits on achievement tests in one or more of the seven academic areas. Students, who are performing at grade level meet academic standards and cannot be considered as having a SLD. Tennessee Special Education Manual, 2003, p. 71.

OSEP advises that the last sentence in our state criteria (italicized in bold type) conflicts with IDEA Part B Regulations regarding grade to grade advancement.

The 2006 regulations provide: **34 CFR § 300.101 Free appropriate public education (FAPE).** (c) *Children advancing from grade to grade.* (1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade. (2) The determination that a child is eligible under this part must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

Therefore, even though a child is performing at grade level and advancing from grade to grade, the child may be eligible under Part B of IDEA for special education and related services, including identification as a child with a specific learning disability.

cc: Ken Kienas, USDOE/OSEP
Ann Sanders, TNDOE/DSE